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HANGING,
Not Puniſhment Enough,

FOR

Murtherers, High-way Men, and Houſe-Breakers.

Offered to the Conſideration of the Two HOUSES of PARLIAMENT.

Cum ſæpiùs peccatur, pœnas augeri Oportet. Bodin de Repub. Lib. 6. Cap. 6.

Αἱ ἑτέρων πμωείαι βελπίους τὰς Πολλὰς,
Τῷ μὴ παραπλήσια παθεῖν. Philo, in Legat.

——— *Cur non*
Ponderibus moduliſque ſuis Ratio utitur, ac res
Ut quæque eſt, ita ſuppliciis delicta coercet? Horat.

——— *Adſit*
Regula, peccatis quæ pœnas irroget æquas. Idem.

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June 19. 1924

TO THE READERS.

I Have with great Concern for ſome years laſt paſt obſerved the Lamentable Increaſe of High-way-Men, and Houſe-breakers among us; and this, tho' the Government has vigorouſly ſet it ſelf againſt them, by pardoning but very Few, and that divers Laws have been Enacted to ſuppreſs them.

I have obſerved too, That tho' there have been very frequent Convictions, and Executions of them, yet ſtill, as the Poets ſaid of Cadmus's *Men, new ones riſe in their places, and their Number ſeems not in the leaſt diminiſhed. And this has often tempted me to think, that there is ſtill ſome defect in our Laws, and that One is ſtill wanting, that may effectually reach this Diſtemper; and do that which thoſe already in force ('tis plain) are unable to do.*

And this is the true reaſon why I ſend this Eſſay *into the World, to ſet this Evil in its due light, and attempt its Cure. And if in it I have diſcovered more* Zeal *than* Knowlege, *yet the good end it aims at, with Candid Judges will cover abundance of faults.*

I am very ſenſible, that much more might have been ſaid to the advantage of my Propoſal, *had I had the Convenience of a* Publick Library, *and that I might have brought great Authorities to concur with me. But I conſider, that let the Ancients and Moderns ſay what they pleaſe, yet in a Diſcerning Age like this, every Man will certainly judge for himſelf; and as the moſt celebrated names will not give credit to an ill Argument, ſo true Reaſoning will take place, even from a Hand as unknown as mine with ſuch Aſſiſtance.*

I will not ſay, but it might have been more proper for others *to have done this than for* me; *but ſince* They, *whoſe*

buſineſs more immediately it was, have declined it; ſo great a ſenſe have I of the evil I complain of, that I have choſen rather to do it looſely and imperfectly, than not at all.

'Twere indeed to have been wiſhed, that ſome Gentleman of the Long Robe would have undertaken it; becauſe They *who have conſidered the whole Body of our Laws, and their Dependance on each other, are much better qualified to judge of their Reaſonableneſs, than* He *who looks ſingly into 'em, and examines only* Thoſe, *that may ſerve his Purpoſe.*

But the late Villanous Attempts to ſet Houſes on fire, to Rob 'em, is ſuch a Provocation, as to engage Every *Man's Indignation againſt ſuch profligate Wretches, to endeavour to root them out, as loſt to all ſenſe of Humanity and good Nature. Such Horrid Practices will juſtifie the utmoſt reſentment; and they who are arrived at that high pitch of Wickedneſs, ought not to breath the common air with other Men.*

I have in this Paper taken but little notice of the Scandalous Wickedneſs and Corruption of Priſons and None *of their Keepers; which was not done by omiſſion or ignorance, of the miſchief that ariſes from thoſe infamous Places and Men. They are* now *known to be the Sanctuaries of Villains, from whence their Emiſſaries are diſpatch'd, and a regular and ſetled Correſpondence is ſaid to be fix'd and carried on, through the whole Fraternity of Rogues in* England. *This is a Grievance too great to be ſpoken of by the by, and under another Head; this requires a Particular Treatiſe by it ſelf, and this cries aloud for a Regulation and Reformation from the Power and Wiſdom of the Parliament, for no leſs Power or Wiſdom than that of a Parliament can Regulate and Reform them.*

Hanging,

Hanging, not Puniſhment enough for Murtherers, High-way Men, and Houſe-breakers.

MY Opinion is, That our preſent Laws that relate to Murtherers, High-way Men, and Houſe-breakers, are too favourable, and inſufficient for the End they are intended. I fear not to ſay *too favourable*, even tho' they extend to Death; ſince *that* Death the Law enjoyns, is found unable to deter 'em. Were it not ſo, our Roads would not be ſo peſter'd with that wicked Generation of Men, nor our Seſſions-Papers Monthly, and the Publick News daily full of ſo many Relations of Robberies and Murthers, and all the Pleaſure and Satisfaction of Travelling deſtroyed, as it is *now*, by being ſo dangerous and unſafe: and (which ought more to be regarded) a frequent interruption given to Trade and Buſineſs, by Robbing of Packets, and intercepting Letters of Correſpondence and Advice; to ſay nothing of the inſecurity of ſending *Exchequer* and *Bank-Bills* by the Publick Conveyances.

I am ſenſible, That the *Engliſh* Clemency and Mildneſs appear eminently in our Laws and Conſtitutions; but ſince it is found that *Ill* Men are grown ſo much more incorrigible, than in our fore-fathers Days, is it not fit that *Good* Men ſhould grow leſs merciful to them, ſince gentler Methods are ineffectual?

I acknowlege alſo, That the Spirit of Chriſtianity diſpoſes us to Patience and Forbearance, inſomuch that when the *Roman* Emperors began to grow Chriſtian, we are informed, That moſt Capital Puniſhments were taken away, and turned into others leſs Sanguinary; either that they might have longer time for Repentance, (an Indulgence agreeable to the Zeal and Piety of thoſe Good Ages) or that the * length and continuance of their Puniſhment might be more Exemplary. And I acknowlege with the Wiſe *Quintilian*, † *That if Ill men could be made Good, as, it muſt be granted, they ſometimes may, it is for the Intereſt of the Commonwealth, that they ſhould rather be ſpared than puniſhed.* And I know, that 't is frequently alledg'd, That you take away a Better thing, and that is a Man's Life, for that which is worſe, and that is, your Money and Goods; but tho' this be ſpeciouſly enough urged, yet I doubt not, but the Publick ‖ Safety and Happineſs may lawfully and reaſonably be ſecured by this way, if it can by no other. No doubt, if other Methods ∴ would do, there had never been recourſe to *Death*, ſince *that* was queſtionleſs reſerv'd as the *laſt* Refuge. But even *that* now fails, and *ſo* fails, that if ſome Remedy be not found to ſtop this growing Evil, we ſhall ſhortly not dare to Travel in *England*, unleſs, as in the Deſarts of *Arabia*, it be in large Companies, and Arm'd. For to ſuch a height of Villany are they

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* *Magis ad Exemplum proficit pœna diuturnior.* Grotius.

† *Nemo dubitabit, quin ſi Nocentes mutari in bonam mentem aliquo modo poſſint, ſicut poſſe interdum conceditur, ſalvos eſſe eos magis è Republica ſit, quàm puniri.*

‖ *Conſuleret ſecuritati juſtâ ultione.* Corn. Tacit.

∴ *Mors ipſa ab iis qui primùm Conſtituerint, non ſeu malum aliquod ſontibus impoſita ſit, ſed tanquam extremum præſidium, & loco medicamenti.* Camerar. Oper. Subciſiv.

arrived,

arrived, that even ſome of the Nobility themſelves have not eſcaped their hands; and there is no order of Men in *England*, but has been ſenſible of their Inſolence and Rage. And 'tis a very great Aggravation of their Crime, and a high provocation to thoſe who fall into their power, That they uſe them in ſo barbarous and inſulting a manner; and ſo much worſe than in former Ages, that ſome Men of ſpirit cannot bear ſo inhumane Treatment, without endangering, and oftentimes loſing their Lives, as has been too often known, to be prov'd.

So that I muſt beg leave to ſay, that they who ſhew no mercy ſhould find none; and if Hanging will not reſtrain them, Hanging them in Chains, and Starving them, or (if Murtherers and Robbers at the ſame time, or Night-incendiaries) breaking them on the Wheel, or Whipping them to Death, a *Roman* Puniſhment ſhould.

I know that Torments ſo unuſual and unknown to us may at firſt ſurprize us, and appear unreaſonable; but I hope eaſily to get over that difficulty, and make it appear upon Examination, that *that* will be the more probable way to ſecure us from our fears of them, and the means of preſerving great numbers of them, who now yearly by an eaſie Death are taken off at the Gallows. For to Men ſo far corrupted in their Principles and Practices, and that have no Expectations beyond the Grave (for ſuch, I fear, is the caſe of moſt of them) no Argument will be ſo cogent, as Pain in an intenſe degree; and a few ſuch Examples made, will be ſo terrifying, that I perſuade my ſelf it would be a Law but ſeldom put in Execution.

But then I muſt add, that I fear it will not have its due effects, if it be too often diſpens'd with; ſince *that* will be apt to give ground to every Offender, to hope he may be of the number of *thoſe*, who ſhall eſcape, and ſo the good end of the Law will be defeated. For if Favour or Affection, or a Man's being of a good Family, or Money can prevail, and take off the Penalty of the Statute; if it be not executed ſteadily and impartially, with an exact hand (ſtill giving allowance for extraordinary Caſes) it will ſerve to little purpoſe, ſince many will be found (as ill men eaſily flatter themſelves) who will not fear a Law, that has ſharp Teeth indeed, but does but ſometimes bite. And this, I believe, muſt be allowed to be the only way to root out our Native Enemies, as they truly are; as might lately have been ſeen in a Neighbouring Kingdom, where ſeverity, without the leaſt mixture of mercy, did ſo ſweep High-way Men out of the Nation, that it has been confidently ſaid, that a Man might ſome time ſince have *openly* carried his Money without fear of loſing it. That he cannot *now*, is to be charged upon their great numbers of Soldiers, without Employment and Plunder, and in poor pitiful Pay; and, it may be, on the very great neceſſities of the People, that make 'em deſperate, and careleſs of their Lives.

'Tis a Rule in * Civil Law, and Reaſon, *That the Puniſhment ſhould not exceed the fault.* If Death then be due to a Man, who ſurreptitiouſly ſteals the Value of Five Shillings (as it is made by a late Statute) ſurely

* *Juſtitia in eo potiſſimum conſiſtit, ut ſupplicium ſit æquale Peccato.* Bodin. de Repub. Lib. 6. cap. 6.

He who puts me in fear of my Life, and breaks the King's Peace, and, it may be, murthers me at laſt, and burns my Houſe, deſerves another ſort of Cenſure *; and if the one muſt die, the other ſhould be made to *feel himſelf die* †.

For, as the Benefit of the Clergy is of late taken from Pick-Pockets, ſo they are *now* in the Eye of the Law upon the ſame foot with Murtherers, High-way Men, and Houſe-breakers. Their Crimes are certainly very unequal, by the Laws of God, and the conſent of Nations; Why then ſhould not their Puniſhment be ſo too ‖?

Beſides, the frequent Repetitions of the ſame Crimes, even in defiance of the preſent Laws in being, is a juſt ground of enacting ſomewhat more terrible; and indeed ſeems to challenge and require it.

Farther ſtill; at the *laſt great day* doubtleſs there will be degrees of Torment, proportionable to Mens guilt and ſin here; and I can ſee no reaſon why we may not imitate the Divine juſtice, and inflict an Animadverſion ſuitable to ſuch enormous Offenders.

And this, I am perſuaded, will beſt anſwer the End of Sanguinary Laws, which are not *chiefly* intended to puniſh the preſent Criminal, but to hinder others from being ſo; and on that account Puniſhments in the Learned Languages are called παραδείγματα *Examples*, as being deſign'd to be ſuch to all mankind.

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* *Si in minimis peccatis etiam maximæ pœnæ conſumuntur, reſtat ut maxima peccata aut maneant impunita, aut nova ſupplicia inveniantur.* Schol. ad Horat.

† *Mori ſe ſentiat.*

‖ *Major minorque tranſgreſſio non Unius debeat multationis prædemnari ſupplicio: præſertim cum Dominus in lege ſua præcipiat: Pro menſura peccati, erit & plagarum modus.* Lex. Wiſigotthor. Lib. 12. Tit. 3. cap. 1.

§ Παραδείγματα, *Exempla.*

If

If it be objected, That I propound Puniſhments, that exceed the Faults. I anſwer,

Firſt, As to *High way Men*, conſider the great terror and fear they put people into; and *that* contributes largely to their Guilt, as appears from *that* being ever a part of their Indictment; and I apprehend, that the Legiſlative Power ought to be highly concern'd, not only for the *Safety*, but for the *Quiet* too of the People.

Beſides, thoſe deſperate Villains hinder Trade and Commerce, and have made even private Viſits, and Offices of Friendſhip unſafe. They now Rob with that Impudence, Aſſurance, and Leiſure, as if they did it Legally and with Commiſſion; and as if they came not to Steal and Rifle, but rather by Authority to ſeize and diſtrain. They have ruined ſeveral, and have brought fear on almoſt All. They have wounded and maimed divers, have left many bound and naked in cold Weather, to the hazard, and often to the loſs of their Lives.

Then again for *Houſe-breakers*, the dread of them is greater than can well be expreſs'd, or than the Inhabitants of Cities and Great Towns, who are well guarded and ſecured by their numbers, can imagin. They terrifie innocent people to that *high* degree, and bring ſuch a Conſternation on a whole Neighbourhood, where their Haunts are, that they would ſcarce be more afraid of a Foreign Invaſion. I hope then, we may be allowed to ſay, it would be a good piece of Service to our Country, if ſomewhat more than *making a Wry Mouth*, as they Ridicule Hanging, were appointed for the one and the other.

As for *Murtherers*, as both of them intentionally are; * *because they are ready armed always for bloody purposes, and have a will not only to Rob but to kill too*; as for such, the Law of Nations is, *That like should be returned for like.* And since it is an express Law of God, That *whoso sheds mans blood, by man shall his blood be shed*, Gen. 9. 6. A scrupulous man may be tempted to suspect, Whether the Power that Christian Princes generally assume of Pardoning † Wilful Murtherers, be not too much, and beyond their Commission, since they Pardon *those*, whose blood God commands directly and positively to be shed.

I am not ignorant of the common Distinction, That the King only remits the loss of his Subject; and among us, that an *Appeal* remains to the Party grieved, tho' even *that* was but lately put in practice. Nevertheless 'tis a known Case, that the Conditions of *Appeals* are strait and narrow, and clog'd, and that they are constantly discouraged, for a reason easily known, and a Flaw in a Word or Sentence has been commonly found in the *Appeal*, and (it may be) plac'd there on purpose to make it insignificant. I am no Enemy to the *just Prerogative* of Princes, but believe it, when in good hands, to be serviceable and advantageous to the People: but I must say, I am inclined to think, that any Usage or Custom, Memorial or ‖ Immemorial, that contradicts, or gives leave to dispense with the Laws

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* *Latro est etiam antequam manus inquinet, qui ad Occidendum jam armatus est, & habet spoliandi atque interficiendi voluntatem.* Sen. Lib. 1. de Benefic.

† *Ego verò nec Principibus ullis, nec mortalium cuiquam veniam largiri Statuo, si Scelus Divinâ Lege Capitale fuerit.* Bodin. Lib. 1. cap. 10.

‖ *Si ne Principi quidem fas est, quod alterius vel minimum interfit, aut injuriam alteri illatam condonare, quonam modo Contumeliam Deo illatam, aut Parricidium consultò perpetratum dissimulare poterit?* Bodin. Lib. 1. cap. 10.

of

of God is null, and in it ſelf void. I dare not poſitively ſay, that this is of that ſort, leſt I arraign the practice of ſo many Ages, and the beſt Princes; but I think that two eminent Civilians declaring,* *That a Murtherer flying to the Church, might be drawn from thence, and even by a Lay-Judge;* (ſays one of them) is a very ſtrong Argument, That the Crime was then look'd upon as exceedingly heinous, ſince even the exorbitant Power of the *Church*, much greater than any *Secular*, was not able to protect thoſe, who were guilty of it.

But ſtill I am ſenſible, that tho' I argue for ſeverity, in general we ought to be tender of ſhedding humane Blood; For † *there is ſuch a Conſanguinity and Relation between all mankind, that no one ought to hurt another, unleſs for ſome good end to be obtain'd.* And *Bodily Puniſhment*, as the Civilian well obſerves, ∴ *is greater than any Pecuniary mulcts*; and every Man knows that he who loſes his Life, is a much greater ſuffrer than he whoſe Goods are confiſcated, or is Fined in the moſt unreaſonable manner in the World.

But my deſign is not, that Man's blood *ſhould* be ſhed, but that it ſhould *not*; and I verily believe, that for *Five* Men Condemned and Executed *now*, you would hardly have *one then*. For thoſe Men out of

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* *Ubi aliquis deliquit extra Eccleſiam, puta quia Commiſerat Homicidium, & fugit ad Eccleſiam; tunc Judex Secularis poteſt eum extrahere.* Bellovis. Practic. Crim. Lib. 2 cap. 8.

Qui deliberato animo Hominem Innocentem Occidiſſent, qui Civitatis turbaſſent Statum, his nec ipſum Sanctiſſimum Dei Altare patrocinabatur. Grot. de Jure Bell. & Pac. Lib. 2. cap. 21.

† *Homo ità Homini alteri ipſâ Conſanguinitate alligatur, ut nocere ei non debeat, niſi boni alicujus conſequendi cauſa.* Grot. Lib. 2. cap. 20.

Dictat Ratio, Homini nihil agendum, quo noceatur alteri, niſi id bonum aliquod habeat Propoſitum. Idem.

∴ *Omnis pœna pecuniaria minor eſt quam Corporalis.* Bell. Lib. 3. cap. 25.

Terror

Terror of such a Law, would ('tis to be hoped) either apply themselves to honest Labour and Industry; or else would remove to our *Plantations*, where they are wanted, and so many useful Hands would not be yearly lost.

But I must add, That *it is not fit, that men in Criminal Causes*, as the Civil Law well directs, *should be condemned*,* *unless the Evidence be clearer than the mid-day Sun*; and no Man should expire in such horrid Agonies, for whose Innocence there is the least pretence.

Now, if with this Proviso, Executions should happen to be more frequent than I suppose, as nothing is to be wondered at in an Age so wicked, let it not be called † Cruelty, since ill Men are to thank themselves for what they knowingly bring on their own heads; and 'tis not the Law that is to be found fault with, but themselves for coming within the reach of it. For *Seneca* as his way is, says very well, || *That no wise Man punishes another so much, because he hath offended, but that others offend not*; *For* (adds he) *that which is to come may be hindred, but that which is past cannot.* We see then the end of Laws, which in Scripture Language is to be ∴ *a Terror to the Wicked*, and every Con-

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* *Probationes in Causa Criminali Luce Meridianâ Clariores esse debent.* Bellovis. Lib. 3. cap. 20.

† *Non exiguo falluntur errore, qui Censuram sive Humanam sive Divinam, Acerbitatis & Malitiæ nomine infamant, putantes nocentem dici oportere, qui nocentes afficit pœnâ.* Lactantius.

Ipse te subdidisti pœnæ.

|| *Nemo prudens punit, quia peccatum est, sed ne peccetur: revocari enim præterita non possunt, futura prohibentur.* Sen. de Clement. cap. 16.

∴ *Res omnes publicæ duobus his fundamentis præmio ac pœnâ stare ac omnino niti videntur.* Bodin. Lib. 5. c. 4.

Deus ipse jubet à Templis Sacrilegia, ab Oppidis direptionem, ab Agris Vastitatem depelli, & omni ratione salutem nostram Expediri: neque id tantum, sed etiam Hostes & Latrones consectari & perdere. Idem. cap. 5.

stitution is permitted to secure its own happiness and well-being by the best methods it is able; and *the safety and quiet of the People, if it be not the Supreme Law, is a very considerable one.*

Isocrates in his *Panathenaic* tells us, * *That their forefathers thought that the War with hurtful Beasts is most just and lawful; and the next to that, that with Men, like Beasts, fierce and hostile by nature, and ever lying in wait for us.* And such are these Men I am describing; and when a Man turns Beast, no Beast is so cruel as he.

By the *Imperial Constitutions* it is declared, † *That if any one could apprehend a Murtherer, and did not, that He should Suffer as a Traytor.* A very effectual way of bringing Malefactors to Punishment; and 'twere well, if it were made *more* penal, for Men to harbour and *knowingly* to receive these Transgressors of the Laws. And *as* our Proverb says, *If there were no Receivers, there would be no Thieves*; so if those Men who buy Stollen Goods at under-rates, and know they are stollen, as in Morality and Reason they are equally guilty with Thieves, if they were to be punished in the same manner they are, this would be to strike at *One* Branch of the Root of this Wickedness. For doubtless such Villanies are carried on by a Confederacy, and they are *all* instruments and subservient one to another, so that if any one part be effectually suppress'd, the *Whole* will fall.

* Τὸν Πόλεμον ἀπελάμβανον ἀναγκαιότατον καὶ δικαιότατον τὸν μετὰ πάντων ἀνθρώπων, πρὸς τὴν ἀγελαιότητα τὴν θηρίων γιγνόμενον δεύτερον ἡγοῦμαι, τὸν μετὰ θηρίων Ἑλλήνων πρὸς τοὺς βαρβάρους, τοὺς καὶ φύσει πολεμίους ὄντας, καὶ πάντα τὸν χρόνον ἐπιβουλεύοντας ἡμῖν.

† *Si probatum fuerit potuisse quempiam Homicidam apprehendere, & non fecerit eum non secus condemnandum, quam si Imperio insidiatus fuerit.* Man.Com. cap. 8.

And

And here, to be just, I fear I must say, our *English* Laws do not take sufficient care to make Restitution to the injured Party, and by that means many Prosecutions are hindred, since a Man's own Goods or Money taken from him by violence, are not easily (if at all) to be recovered, even tho' the Thief be apprehended and convicted. And this, we need not question, occasions many *Private Compositions*; and, as most Men will still have an Eye to their own Interest, more than to the Publick; *so* they chuse to have their Goods restored, rather than to be at the great trouble and charge of Prosecution. Nay, which is worse, I am well assured, that some have refused to own their Goods (when taken on a Thief) before a *Magistrate*, for fear of forfeiting their *Recognizance*, and of long Journies, that may sometimes more than double the loss.

By the *Civil Law* two distinct Actions were commenc'd against every Thief, nor did the one interfere with the other. And they were, first, a *Criminal One*, for the Breach of the Laws, and Publick Peace, and secondly, a *Civil One*, to demand satisfaction for what was stollen, and the Malefactor was obliged to answer to both. First, he suffered what the Law inflicted, if he were found guilty. Secondly, the injured Person had Restitution made him, if it could be; and this seems a Practice agreeable to right reason. For a Man will be apt to ask, what concern it is to *him* in particular, if a Criminal be brought to justice, if *he* must be a loser by it? But when the Publick and Private Interest go hand in hand, there is more hope of success, and Men will proceed chearfully.

'Tis true, the Question is asked, *Whether the Convict has any Goods or Chattels?* but, according to Form, the

Juries all agree to answer, *None that they know of*; nor do they take care to know of any. And if any be discovered, they are forfeited to the *King*. A hard case this, That altho' a Man has injured me in a very great degree, by robbing me of what's very considerable, and die solvent, yet the Laws allow me no satisfaction, but *that poor one*, of seeing a Rogue Hanged, who (it may be) leaves the Money, he has stollen from me, to his Whore, or his Bastard. Besides, I wish it be not against the Rules of *natural justice*, that another (be it who it will) should have a Legal Title to my Money or Goods, which I have forfeited by the Breach of no Law, and were taken from me by force, and ought to be restored to me, where ever I find them.

I must then prefer the Civil Law to ours, and think it scarce reasonable, that Reparation should be *only* given to the *King*, since *He* is not the Person chiefly, much less only injured; but I, who really am so, should be bound to appear at the *Assizes* or *Sessions*, at a great trouble and expence; and yet, after all my Attendance, shall be so far from having Restitution of my Goods lost (unless with great difficulty) that I shall not so much as have Costs and Charges.

And this, 'tis probable, is a great Hindrance to the Prosecution of Offenders, and ever will be: For tho' a Man be very angry at the loss of Money or Goods, yet if he hears of them, his Resentments commonly cool, if he finds they are recoverable; and the business is generally made up (as they call it) among themselves; and 'tis never brought before a Magistrate, to the great obstruction of Justice, and the Publick Good. And this may be constantly seen at the *Old Baily*, where several are acquitted every Sessions for want of Evidence, or for their not speaking home to the matter:

there's no question, but there's a good understanding between *Culprit* and *Them*, or you wou'd sometim s hear another story. 'Twere then to be wished, that the Obligation to prosecute were made *stronger*, and that those Private Compositions, which are without doubt very numerous, were more narrowly inquired into.

It was one of the most illustrious Actions of the *Heroes* of old, to clear the Country of Robbers; and 'tis a great pa t of *Theseus*'s Character, that he destroyed *Sciron*, *Cercyon* and *Procrustes*; and of *Hercules*, that he conquered Monsters and Oppressors of the People. Nor is it less brave or generous to do it *now*, since 'tis almost come to this, Whether Honest Men or Rogues shall command the Roads; and I hope our *Legislators* will soon decide that Controversie. I remember *Seneca* says, **That when he shall order a wicked man to be Beheaded he would do it with the same look and courage, as he would strike Serpents and poysonous creatures.* And such are these Men, dangerous and mischievous, and deserve as little favour as they. They are a very great grievance to this Nation, and 'tis to be feared, will be *more* so, unless some method, yet unknown, be tryed. And altho' I am not in the least concern'd, whether it be mine, or another's, so it do s well; yet I fully persuade my self, that a rigorous one will be the best; since *as* these Gentlemen run all this hazard, and are so injurious to others, barely for the gratification of their senses, *so* no way so likely to oblige them to lay down their wicked Practices, as by making the *Pain* much out-bid the *Pleasure*, and by inflicting somewhat

* *Cum Cervices noxio præcidi imperabo, eo vultu animoque ero, quo Serpentes, & animalia venenata percutio.* Lib. 2. de Ira.

they

they will tremble at *here*, since they fear nothing *hereafter*. For *the sort of* * *Death is as much to be regarded as Death it self.* And as the Formalities and Pomp of a Court of Justice make it appear more formidable, and convey a greater awe into the Prisoners mind, so no question but the Preparations for their Execution and the solemn manner of carrying them to it, is more dreadful with *some*, than the stroke it self. 'Tis true indeed, *some* have been so fool-hardy, as to go fearless and ranting to the Gallows, not in the least concern'd at the approach of Death; they would hardly do so, were they carrying to the *Wheel*, where the Pains of Death would be so often repeated, before they would expire. So *Tiberius* † of old thought (an Emperor sufficiently skill'd in the degrees of Punishment) when he called a Man's being before-hand with him in murthering himself, *an escaping him*; and to one who Petitioned him for a *speedy Death*, he answered, That he was not upon so good Terms with him *yet*.

'Tis plain, every Government has allotted different sorts of Death for different Crimes, as among the rest *We* in this Kingdom have, and as the *Romans*, and the wisest Nations have always done, as I could easily prove, if it wanted it. And I believe *this* may be soon made good, that where those distinctions are made by the Laws, and they are impartially put in Execution, the Publick is most safe; unless they are screwed up

* *Tristius est Letho Lethi genus.* Mart.

† *Mortem adeò leve supplicium putabat, ut cum audisset unum ex reis, Carnulium nomine, anticipasse eum, exclamaverit, Carnulius me evasit.* Sueton. de Vitâ Tiber.

Cuidam pœnæ Maturitatem precanti respondit, nondum tecum in gratiam redii. Idem de eodem.

much

much beyond the proportion of the Guilt, and *that* (I confess) is a just Objection to *any* Law whatever.

But I still insist upon what I laid down at first, that the good and quiet of *the Whole* is of so great concernment, that I doubt not but any Community may secure it self, as it best can, * without the imputation of Cruelty; since one would judge so well of Humane Nature, as to believe, that such harsh methods would not be made use of, before they are absolutely necessary, any more than a Physician would Cup or Scarifie his *Patient*, unless to prevent his Dissolution, a greater evil.

The first reason of Mens fortifying themselves, and building Walled Cities, was to secure themselves from those who would otherwise have made a Prey of them; for in those early days, the stronger domineer'd and insulted over the weaker, and Might then passed for Right; and *Plato* and his Scholar *Aristotle* reckoned Robbery among the sorts of Hunting, and in *Hebrew* Robbery and Hunting are express'd by the same word. I urge this in this manner, If *they* for their general security thought it most proper to enter into Societies; I think honest Men for their particular safety should enter into a closer Alliance, and the strictest Confederacy, for the destruction of a Set of Men, who are *now* grown intolerable, and who by the contempt of Laws made against them *already*, seem to dare the Government to make new ones.

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* *Publica Pœna nil habet Commune cum ultione & privatâ injuriâ.* Bodin. de Repub. Lib. 6. Cap. 6.

I know

I know well, that other Proposals have been made for the exterminating these Vipers, but none that I have heard of, but lye open to several Material Objections.

Some have thought, that should you send them for Slaves to *Barbary*, you might have them exchanged (tho' scarce number for number) for honest Men: and so you might redeem those poor Wretches, that groan under Captivity, and let them have Rogues in their rooms, who will suffer no more than they deserve.

The Objections to this are, That many of them, 'tis probable, wou'd be ransomed, and perhaps some of them with that very Money they had got by Robbing: if not, that there is great danger, that such Men will renounce their Faith and Baptism (neither of which, 'tis plain, influence them much) for the Advantages to be had by so doing; and, as it has been observed of Renegadoes, prove the most desperate and malicious Enemies to Christendom, and particularly their Native Country.

Others have said, That you might Brand them in the Forehead, and condemn them to Perpetual Slavery at home, and employ them in the most painful and offensive Works you had, and feed them with Bread and Water. And this, say they, would be more dreadful to *Idle Men*, than Death.

In this there are many difficulties, not easily to be answered, and among others these; That *some* that cannot live without hard Working, would venture to Rob, because 'tis but Working, if the worst comes to the worst. That others would murther themselves. That in a Nation so compassionate as ours is, they will certainly be relieved. And it may be, that their being constantly seen in so sad a condition would draw too

great

great an Odium on the Government; and besides, (there being so little publick watching in *England*) they would not fail of making Escapes (as appears from two several Advertisements in the late * Gazetts, of Six who were pardoned on condition they would work *Five* years in the *Welch* Mines, and yet got away) on of being rescued, and then growing most desperate and mischievous Villains.

'Tis true, the Author of the *Familiar Dialogue* about the *Mine-Adventure* has said some plausible things to persuade the World, that condemning Criminals to the Mines (you may be sure he means the *Welsh-Mines*) will be more terrible than Death. But Mankind will always suspect *those* Reasons to be partial, when *His* Interest who alleges them is nearly concern'd in the cause; and they will ever be jealous of the sincerity and truth of Arguments that a Man produces on his *own* side, tho' they be sound and good. Now should I allow, that he has written fairly, and with a good design, yet what security has the Government, that these Men for bribes or favour will not be permitted to escape? None but Rogues are fit to look to 'em, and who would commit so great a trust to Men void of Honesty and Probity? Will the Adventurers give a Penal Bond of Five hundred Pound for every one they take, to be forfeited if he runs away? I doubt they will hardly consent to it. What reason then is there, that *they* should have the advantage of Men's labour, when they will not answer the Damage the Publick may receive, from such a nest of Rogues

* *Octob.* 14. 1700. *Decemb.* 9. 1700.

being let loo'e among the People? What ſatisfaction will they give the Nation for thoſe *ſix*, that are now free, and (I ſuppoſe) very buſie in their former Vocation?

It may be, that the * condemning them for Life, to the ſame condition with the *Negro*'s, in our *Weſt Indian* Plantations, firſt marking them in the Face, to diſtinguiſh them from Honeſt Men, may be a Propoſal lyable to as few Exceptions, as any other. But then the Planters too ſhould give ſecurity, that they will never part with them, and that they ſhall never return to *England*: tho' I fear they will hardly take them on *ſuch* Conditions, they beginning already, as I hear, to grow weary of *Thoſe* they have.

I could wiſh indeed, that *that* improved, as it may eaſily be, or ſome other method might be thought of, for ſuppreſſing them; if it might be, without taking away their Lives: but what I have hitherto written, is upon ſuppoſition that *none* can be. If there could, I would moſt gladly recant my own opinion, and much prefer *that*, as more agreeable with Religion, right reaſon, and the true ends of Government.

I have not the vanity to think, that what I offer ſhall convince all the world, and makes 'em of my mind. He muſt be but little ſkill'd in Mens tempers, who has ſuch Expectations. No, I know the world and my ſelf be ter than to hope for it. But this I may

* *Non abs re erit Chriſtianis Rectoribus, ſaltèm ex parte aliquâ, imitandum proponere exemplum Sabaconis, Ægyptii Regis, pietatis nomine laudatiſſimi, à quo Capitales pœnas in damnationem ad opus mutatas, feliciſſimo ſucceſſu narrat Diodorus.* Grot. de Jur. Bel. & Pac. Lib. 2. cap. 20. Sect. 12.

be allowed to hope, that I may provoke ſome one to promote ſomewhat *more* uſeful than I have done. And if my Errors ſhall ſo contribute to the publick good, I ſhall rejoice in them.

To proceed,—Be it what it will that ſhall be aſſigned them, I believe that in the next place the ſpeedy execution of it would be the *beſt* way of making it anſwer its end. For Offenders may lye in County-Goals three, four, five or ſix Months ſometimes, before they are brought to Trial, during which time frequent Eſcapes are made, at leaſt the Evidence againſt them may die, may be murthered, may be tampered with and bought off, or (it may be) Endeavours uſed to get a Pardon. 'Tis true, *they* are very hard to be got *now*, but you can never forbid Men to attempt or hope for, what they know *may* be had. And I am not ſuch an Enemy to Prerogative, whatever is before advanced, but that I think it very reaſonable they ſhould upon ſome Occaſions be had (ſince the *end* of the Law may *ſometimes* be beſt ſerved by remitting its penalty) and Reaſon, were the *Civilian* ſilent, will teach us, * *That 'tis an unjuſt Law, that takes away the Power from the Magiſtrate of relaxing it, or making it more rigorous, according to the Variety of Cauſes.* And yet I have read in a Body of the *Scotiſh* Laws (where the Kingly Power was lately carried very *high*, and juſtified to be *Legal.*)

* *Lex iniqua debet videri, & pœna iniqua, quæ Magiſtratui Moderandæ aut exacerbandæ legis, pro Cauſarum varietate adimit Poteſtatem.* Bodin.

(*) **That if it may be Verified, that the Slaughter was Committed, be Murther or forethocht felonie, or Malice: the King hes promiſed and granted, that for ſic Slaughter, he ſall not give ane remiſſion, at the inſtance of quhatſumever perſon, except it be given with the Conſent and Advyſe of the generall Counſal: gif they ſall think it expedient for the Common Weall of the Realme.**

To reſume then what I ſaid above, I wiſh that Goal-deliveries were more frequent; ſince Juſtice, the oftner ſhe draws her Sword, is the more formidable; as may be ſeen in *France*, where Malefactors, as I am well informed, are Apprehended, Condemned and Executed often before their Friends can hear of them, or be able to intercede for them.

Beſides, in common Perſons ſo much Roguery is learn'd among Numbers, that I think 'twere well, if, as in the Inquiſition (*Fas eſt & ab Hoſte doceri*) every one, at leaſt of the moſt notorious ones, had a Box or Cell to himſelf, that they might not improve each other in wickedneſs. This would make their Confinement more uneaſie, and of conſequence more dreaded, and they would be better ſecured. But, what is much more conſiderable, the unfortunate Debters, who in *County-Goals* are mingled with *Felons*, would not be corrupted by 'em.

* *Regiam Majeſtatem*, by Sir *John Skene*, Statutes of King *David* the Second, Chap. 50. Printed at *Edinburgh*. 1609.

I might

I might add, that it were not amiſs, if after Condemnation they were allowed nothing but Bread and Water; a good way to humble them, and bring them to a ſenſe of their Condition, as to a future ſtate, and to put a ſtop to their murthering their Keepers, and attempting to break Goal. And it were well, if a Particular Habit (Black the moſt proper Colour) were aſſigned them, at leaſt at their Executions; and that they might not be ſuffered to make their *Exits* in Gay Clothes (as they ſometimes do like Men that Triumph) but rather as becomes *Thoſe*, who are juſt going to undergo the Curſe of the Law, and that are intended to be a Warning to Others. Theſe things to ſome may look too little to be taken notice of; but let ſuch Men be told, That *little* things do often *greatly* affect.

We need not go far for Reaſons of the great Numbers and increaſe of theſe Vermin: for tho' no times have been without them, yet we may now reaſonably believe, that after ſo many Thouſands of Soldiers disbanded, and Mariners diſcharged, many of them are driven upon neceſſity, and having been uſed to an idle way of living, care not to work, and many (I fear) cannot, if they would. Beſides, the Poor are exceedingly numerous, of which 'tis more eaſie to aſſign the Cauſe than the Cure, and of conſequence, 'tis to be feared, more that are diſhoneſt. *Gaming-Houſes* (thoſe Seminaries of that ſort of Cattel) are yet in being, tho' 'tis ten thouſand pities they ſhould: *Lewd Women* abound, to the great Scandal of good people, and I fear, *They* are very often

often the chief Cauſes, that theſe Men Murther, Plunder, Rob and Steal.

I am not inſenble that what I now offer to the Peruſal of the Two Houſes of Parliament will find them engag'd in buſineſs of the greateſt moment and weight. I know that the Affairs of *Europe* ſeem now to be drawing to ſuch a *Criſis*, that the moſt Artful Hands and moſt able Heads will hardly be ſufficient to keep it from a dangerous Paroxiſm. For when ſome parts of the Body grow unnaturally large, and others ſhrink and are diſproportionably little, 'tis plain the whole is in danger, and calls out for the beſt Applications. I acknowledge this, but withal I know, that in the moſt urgent Buſineſſes there are always ſuch Intervals, that will allow of the diſpatch of others, and I believe this is not unworthy of their Conſideration.

As there is a Reſemblance between the Natural and Politick Body, it may be well if our Legiſlators would proceed in the ſame manner that the Phyſitians do, who remove ſome particular Diſtempers by rectifying the whole Maſs of Blood. And indeed a General Reformation (for which good Men wiſh and pray) is moſt likely to put a ſtop to this ſpreading evil, ſince *that* would ſet Men right in their Principles, to the corruption of which their ill practices are without doubt owing. And this is a Work moſt glorious, and well worthy not only of Senates, but of the greateſt and moſt Victorious Kings; and this in future *Annals* will add a greater luſter to their Character, than all their Noble

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ble and Illustrious Actions in the Field. For tho Magnanimity, Bravery and Courage be commonly attributed to Princes and Great Men, as their greatest Ornaments; yet 'tis worth our Observation, That * *Piety* is the best Title, by the best Poet, to the best Hero.

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* Virgil, Pius Æneas.

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6/9/24

FINIS.